

DECLARATION OF KYLE W. MACH

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RICHARD GIBSON, and HERIBERTO
VALIENTE,

Plaintiffs,

v.

MGM RESORTS INTERNATIONAL,
CENDYN GROUP, LLC, THE
RAINMAKER GROUP UNLIMITED, INC.,
CAESARS ENTERTAINMENT INC.,
TREASURE ISLAND, LLC, WYNN
RESORTS HOLDINGS, LLC,

Defendants.

CASE NO.: 2:23-cv-00140-MMD-DJA

**DECLARATION OF KYLE W. MACH IN
SUPPORT OF MGM RESORTS
INTERNATIONAL'S JOINDER TO
DEFENDANTS' JOINT MOTION TO
STAY DISCOVERY AND MOTION TO
STAY DISCOVERY**

1 I, Kyle W. Mach, declare as follows:

2 1. I am a partner at Munger, Tolles & Olson LLP and counsel of record for Defendant
3 MGM Resorts International in the above-captioned action. I am licensed to practice law in the
4 state of California and was admitted *pro hac vice* to practice before this Court. I submit this
5 Declaration in support of MGM's Joinder to Defendants' Joint Motion to Stay Discovery and
6 Motion to Stay Discovery. I have personal knowledge of the facts set forth in this Declaration,
7 and if called as a witness, could and would competently testify thereto.

8 2. Defendants moved to dismiss Plaintiffs' complaint on March 27, 2023. Defendants
9 jointly argued that Plaintiffs failed to state a plausible antitrust claim, ECF No. 91, and MGM
10 argued in a joinder and separate motion that for additional reasons Plaintiffs failed to state a
11 plausible antitrust claim as to MGM, ECF No. 92. Plaintiffs filed response briefs on May 11,
12 2023, ECF Nos. 109, 110, and Defendants filed replies on June 12, 2023, ECF Nos. 123, 124.

13 3. On May 22, 2023, Defendants moved to stay discovery pending the resolution of
14 the motions to dismiss. Defendants Cendyn Group, LLC, The Rainmaker Group Unlimited, Inc.,
15 Caesars Entertainment Inc., Treasure Island, LLC, and Wynn Resorts Holding, LLC argued that
16 the Court should partially stay discovery, having agreed to provide Plaintiffs with certain limited
17 responses. ECF No. 114. MGM filed a joinder to that motion, and also moved for a complete stay
18 of discovery as to MGM. ECF No. 116.

19 4. As described in the Declaration of Brendan McShane filed in support of
20 Defendants' joint motion to stay discovery, the parties conducted the conference required by
21 Federal Rule of Civil Procedure 26(f) on April 24, May 9, and May 10, 2023. ECF No. 114-1 at
22 3.

23 5. As indicated in Exhibit A to the Declaration of Brendan McShane, in negotiations
24 with Plaintiffs, Defendants reserved their rights to seek a stay of all discovery in the event the
25 parties were not able to reach an agreement on the discovery issues. ECF No. 114-2 at 3. During
26 the call on April 24, 2023, I explained that MGM did not join in the other Defendants' proposal
27 for partial discovery.

6. As indicated in the Declaration of Brendan McShane, during the May 9 and 10, 2023, conferences, the parties discussed their positions regarding the appropriate scope of discovery pending Defendants' motions to dismiss. The parties conferred in good faith, but were unable to reach a resolution regarding the scope of discovery during the pendency of the motions to dismiss. ECF No. 114-1 at 4.

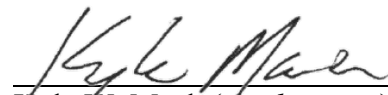
7. On May 12, 2023, Defendants sent to Plaintiffs a mark-up of the proposed discovery plan that reflected MGM's position. I have been informed that during a further phone conference on May 15, 2023, my partner Bethany Kristovich spoke with counsel for Plaintiffs and discussed that, given the inability to agree on the scope of limited discovery during the pendency of the motions to dismiss, MGM would seek a full stay of discovery. Ms. Kristovich subsequently sent a proposed revision to the discovery plan to Plaintiffs that reflected MGM's position, and Plaintiffs asked counsel for MGM to incorporate its position into the joint draft discovery plan, which MGM did. Attached as **Exhibit A** to this Declaration is a true and correct copy of email correspondence between Ms. Kristovich and Plaintiffs' counsel, on which I was copied, dated May 15, 2023.

8. On May 15, 2023, the parties filed a Joint Discovery Plan outlining the meet and confer efforts regarding discovery, as well as the parties' competing proposals for discovery. ECF No. 111. MGM indicated, and Plaintiffs acknowledged, MGM's position that discovery against it should be stayed entirely pending the resolution of the motions to dismiss.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 19th day of June 2022 in San Francisco, California.

By


 Kyle W. Mach (*pro hac vice*)

MUNGER, TOLLES & OLSON LLP
 Attorneys for MGM Resorts International